



BEFORE THE STATE BOARD OF EQUALIZATION
'OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JUDITH O. LYNCH)

For Appellant: Judith O. Lynch, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Judith O. Lynch against proposed assessments of additional personal income tax in the amounts of \$54.52 and \$120.86 for the years 1973 and 1974, respectively;

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The question presented is whether appellant qualified as a head of household for the years 1973 and 1974.

Appellant, a single woman, filed her 1973 and 1974 California personal income tax returns claiming head of household status. Appellant's brother was listed on the return as the individual who qualified her as a head of household. Upon investigation, respondent determined that appellant's brother lived with her for only eleven months in 1973 and nine months in 1974. Appellant did not anticipate her brother moving into her home before he did so. The brother moved from appellant's home in 1974 for personal reasons. There is no evidence that he ever intended to return to appellant's home.

Respondent disallowed the claimed head of household status for both years because appellant's brother did not live with her for a full year in either 1973 or 1974. Respondent did, however, allow appellant an additional dependent credit for each year because of her support of her brother. Appellant protested this action on the basis that she did not consider it fair that she should be denied head of household status in view of her support of her brother during the time in question. Appellant's protest was denied and this appeal followed.

The term "head of household" is defined in section 17042 of the Revenue and Taxation Code which provides, in pertinent part:

For purposes of this part, an individual shall be considered a head of household if, and only if, such individual is not married at the close of the taxable year, and ...

(a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--

* * *

(2) Any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a credit for the taxable year for such person, under Section 17054; ...

Appellant's brother is an individual who could qualify her as a head of household since she is entitled to a personal exemption credit for supporting him. (Rev. & Tax. Code, § 17054.) However, we have previously held

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that the statute quoted above which requires that a household be provided for the "taxable year," means for the entire taxable year. (Appeal of Gwen W. Fondren, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Henry C. H. Hsiung, Cal. St. Bd. of Equal., Dec. 17, 1974; see also Cal. Admin. Code, tit. 18, reg. 17042-17043, subd.

(b)(1).) In the instant case, appellant's brother did not occupy her household for the entire year in either 1973 or 1974. Although respondent's regulations provide for a "temporary absence due to special circumstances," the record does not indicate that the brother's absences were either "temporary" or "due to special circumstances." The record indicates that appellant did not anticipate her brother's arrival in 1973, and did not expect his return after his departure in 1974. Therefore, appellant cannot qualify for head of household status. For these reasons we conclude that respondent's action in this matter must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Judith O. Lynch against proposed assessments of additional personal income tax in the amounts of \$54.52 and \$120.86 for the years 1973 and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day
of May , 19'78, by the State Board of Equalization.

George H. Hume, Chairman
Paul H. Hume, Member
Wesley H. Hume, Member
William H. Hume, Member
_____, Member